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Congress of the United States
House of Representatives
Washington, DC 20515-4501

October 24, 1997

**COMMITTEE ON BANKING AND
FINANCIAL SERVICES**

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HUMAN RESOURCES AND
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CHAIR: PROGRESSIVE CAUCUS

Via Facsimile and First-Class Mail

DOCKET FILE COPY ORIGINAL

Mr. William Catton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

RECEIVED

OCT 24 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: In re Procedures for Reviewing Requests for Relief from State and Local Regulations Pursuant to Section 332(c)(7)(B)(v) of the Communications Act of 1934 (WT Docket No. 97-192); Guidelines for Evaluating the Environmental Effects of Radio frequency Radiation (ET Docket No. 93-62); and Petition for Rulemaking of the Cellular Telecommunications Industry Association Concerning Amendment of Commission's Rules to Preempt State and Local Regulation of Commercial Mobile Radio Service Transmitting Facilities (RM-8577).

Dear Mr. Catton:

I write to express opposition to the Federal Communications Commission's (FCC) proposals to preempt Vermont's land-use law, Act 250, with regard to personal wireless service facilities.

As you should know, earlier this month, the Vermont State Environmental Board submitted its Comments to your office regarding the dockets referenced above. I write to express strong support for the Board's Comments, as well as to add my perspective as both former mayor of Burlington, Vermont and as the At-Large Representative of the state of Vermont.

As you may know, Vermont in many respects has been a national leader in the area of land-use planning and environmental protection. Due to Act 250, which provides for local control over land development and environmental protection, Vermonters have had an opportunity over the past 27 years, at the local and state level, to deliberately review and assess the impact of potential development on their communities and landscapes. I can say confidently that Vermont's environment -- as well as the growing tourist economy which is linked to the health and beauty of that environment -- has benefitted greatly from this excise of local control. It is also fair to say that Vermont's sustainable growth patterns and relatively unspoiled landscape is the envy of our neighbors in the Northeast, who have not enacted land-use laws which are as

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sensitive to local control as Act 250.

In this context, I take very strong exception to the FCC's recent proposals, which in effect dictate to the Vermont Environmental Board and its district environmental commissions what evidence may be used to determine whether a cellular transmitter exceeds FCC standards for radio frequency (RF) exposure.

Although the FCC is responsible for protecting the public from the technology it regulates, this responsibility does not preempt local or state bodies from requiring applicants or licensees to publicly document compliance with FCC-mandated RF emissions guidelines. The Telecommunications Act states at Section 704 (iv): "No State or local authority... may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions." This language indicates that FCC preemption is **conditional**, and only appropriate only when the FCC RF emissions guidelines are met. Clearly, however, whether the FCC guidelines are met by an applicant's proposed facility is a question of fact -- a question for the State Environmental Board and its district environmental commissions, not the FCC.

The FCC should not undermine Vermont's Act 250 requirement that the applicant demonstrate its project's compliance with FCC guidelines. Moreover, the FCC should not limit the type of information that the local or state authorities may seek from the applicant. The proposed rule would result in the violation of basic democratic process by limiting the otherwise full and fair of participation of both the citizens affected by these facilities and the wireless provider. The proposed rule would amount to a self-certification process for the applicant, and should not be adopted.

Furthermore, no further Federal preemption is warranted as evidenced by the successful deployment of personal wireless service in Vermont. According to the State Environmental Board, for the period 1990 through 1995, there were a total of 66 permit applications for new support structures, or the expansion of existing support structures in Vermont. Of the 66 applications, 58 received permits and only 2 were denied. Further, the State has in fact responded to the growing number of applications by adopting a specialized application form which is intended to provide a more expedited yet more thorough review of these facilities. It is my understanding that in those rare cases when permits have been delayed, they are typically a result of poor planning on the part of the applicants or poor communication between parties, and not the fault of the Act 250 review process.

Additionally, I also strongly oppose the FCC's proposal with respect to Section 332(c)(7)(B)(v) which would allow a wireless provider to seek relief from the FCC from an adverse decision of a local or state board while its independent appeal of that decision is pending.

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This proposal would have the effect of encouraging the wireless provider to seek litigation before the FCC in Washington, D.C., where neither the State nor local governments will enjoy the huge financial advantages and resources currently enjoyed by the wireless industry. This proposal unreasonably shifts the balance away from the Vermont citizens whose health and environment are at stake.

In conclusion, I have heard complaints about the proposed FCC rule from many concerned individuals and municipalities across the state, from all political backgrounds, who unanimously agree that they, and not the FCC, should have the right to responsibly review such matters which uniquely and directly impact their health and their environment. In the strongest terms, I urge the FCC to follow the reasoning contained in the Comments submitted by the State Environmental Board and allow the citizens of the state to continue to exercise their rights at the state and local level.

Sincerely,



Bernard Sanders

Member of Congress

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